(23,724)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 185.

S. J. SLIGH, PLAINTIFF IN ERROR,

vs.

JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 3, 1914.

1 Be it remembered, That on the 10th day of January, A. D. 1913, at a regular term of the Supreme Court of the State of Florida, came the plaintiff in error, S. J. Sligh, by counsel and filed in the Clerk's office of the Supreme Court of Florida, a transcript of the record of the proceedings and judgment of the Circuit Court of Florida for Orange County, in a certain cause wherein, S. J. Sligh, was petitioner and James A. Kirkwood, as Sheriff of Orange County, Florida, was respondent, and of the writ of error therein from the judgment of the Circuit Court therein rendered, which said transcript of record of the cause aforesaid, and subsequent proceedings to judgment and writ of error therefrom is in the words and figures as follows, to-wit:

2 ***Transcript of Record of Proceedings in the Circuit Court of Orange County, in the Matter of the Petition for Habeas Corpus of the Petitioner, S. J. Sligh, vs. James A. Kirkwood, as Sheriff of Orange County, Defendant, Therein Lately Pending.***

On the 14th day of November, A. D. 1912, the complainant filed and presented before the Judge of said court his petition for habeas corpus in words and figures following:

To the Honorable James W. Perkins, Judge of the Seventh Judicial Circuit of the State of Florida:

Your petitioner, S. J. Sligh, a citizen and resident of the County of Orange and State of Florida, said county being a part of the Seventh Judicial Circuit of the State of Florida, complaining says unto your honor that he is detained and imprisoned in the jail of said County of Orange by J. A. Kirkwood, Sheriff and Jailer of said County, on a charge of shipping from the State of Florida to other States in the United States immature oranges, the same being citrus fruits, said charge being based upon chapter 6236 of the Acts of the Florida Legislature, of 1911, and approved June 5th, 1911, and your petitioner is so held in custody by said sheriff as aforesaid by virtue of three certain warrants for the arrest and detention of your petitioner, issued out of the Criminal Court of Record in and for Orange county, Florida, said warrants being based upon three separate informations filed in said Criminal Court of record by George A. De Cottes, County Solicitor for said Criminal Court of Record for Orange County, the first of said informations being as follows, to-wit:

In the Criminal Court of Record of the County of Orange and State of Florida, November Term, in the Year of our Lord One Thousand Nine Hundred and Twelve.

THE STATE OF FLORIDA
vs.
S. J. SLIGH.

Information for Shipping Immature Oranges.

In the name and by the Authority of the State of Florida:
3 Geo. A. De Cottes, County Solicitor for the County of Orange prosecuting for the State of Florida, in the said County, under oath, information makes that S. J. Sligh of the County of Orange and State of Florida, on the 16th day of October in the year of our Lord one thousand nine hundred and twelve in the County and State aforesaid did ship to Winecoff & Adams, at Birmingham, Alabama, one car of immature oranges, the same being Citrus Fruits.

And the said Geo. A. De Cottes, County Solicitor, as aforesaid, prosecuting as aforesaid, under oath further information makes that the said S. J. Sligh on the 16th day of October A. D., 1912, in the County and State aforesaid did deliver to an agent of the Seaboard Air Line Railway Company, a common carrier, for shipment to Winecoff & Adams, Birmingham, Alabama, one car of oranges, which were Citrus Fruits, and which were then and there immature and unfit for consumption.

Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

(Signed) GEO. A. DE COTTES,
County Solicitor, Orange County, Florida.

STATE OF FLORIDA,
County of Orange:

Personally appeared before me, Geo. A. De Cottes, County Solicitor for Orange County, Florida, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged.

(Signed) GEO. A. DE COTTES,
County Solicitor.

Sworn to and subscribed before me this 11th day of Nov. A. D. 1912.

(Signed) L. WICHTENDAHL,
[SEAL.] *Clerk of the Criminal Court.*

That as shown by said information, the same undertakes to try and punish your petitioner for the shipment by him of one car of immature oranges from the County of Orange and State of Florida

to certain parties in the City of Birmingham and State of Alabama, to-wit, Winecoff & Adams; that upon the filing of the aforesaid information against your petitioner, a warrant for the arrest
4 and detention of your petitioner was issued out of said court, which said warrant is in words and figures following to-wit:

The State of Florida to all and singular the sheriffs of the State of Florida, Greeting:

You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Court-House at Orlando, on the 13th day of Nov. 1912, to answer unto the State of Florida on an information filed against him by the County Solicitor for the County of Orange, for shipping immature fruit and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court, and the seal of said court, at the Court-House at Orlando, aforesaid, on this 12th day of Nov. A. D. 1912.

(Signed) L. WICHTENDAHL, *Clerk*,
[SEAL.] By —— ——, *Deputy Clerk*.

And upon the back of said warrant is the following return by J. A. Kirkwood, as Sheriff, &c.:

Rec'd this writ on Nov. 12th, 1912, executed the same on Nov. 13th, A. D., 1912, by arresting the within named defendant S. J. Sligh and having him now in custody.

(Signed) J. A. KIRKWOOD, *Sheriff*.

That the second of said informations upon which your petitioner was arrested and is now detained charges your petitioner with the shipment of fifty boxes of immature oranges from the County of Orange and State of Florida, to Grantham Brothers at and in the City of Savannah, and State of Georgia, and beyond the limits of the State of Florida, which said information is in words and figures following, to-wit:

In the Criminal Court of Record of the County of Orange and State of Florida, November Term, in the Year of our Lord One Thousand Nine Hundred and Twelve.

THE STATE OF FLORIDA
vs.
S. J. SLIGH.

Information for Shipping Immature Oranges.

In the Name and by the Authority of the State of Florida
5 Geo. A. De Cottes, County Solicitor for the County of Orange prosecuting for the State of Florida, in the said County, un-

der oath, information makes that S. J. Sligh of the County of Orange and State of Florida, on the 14th, day of October, in the year of our Lord one Thousand nine hundred and twelve in the County and State aforesaid, did ship to Grantham Bros. at Savannah, Georgia, fifty (50) boxes of immature oranges, the same being Citrus Fruits.

And the said Geo. A. De Cottes, County Solicitor, as aforesaid, prosecuting as aforesaid, under oath further information makes that the said S. J. Sligh on the 14th day of October A. D. 1912, in the County and State aforesaid did deliver to an agent of the Seaboard Air Line Railway Company, a common carrier, for shipment to Grantham Bros., Savannah, Georgia, fifty (50) boxes of oranges, which were Citrus Fruits, and which were then and there immature and unfit for consumption.

Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

(Signed) GEO. A. DE COTTES,
County Solicitor, Orange County, Florida.

STATE OF FLORIDA,
County of Orange:

Personally appeared before me Geo. A. De Cottes, County Solicitor for Orange County, Florida, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged.

(Signed) GEO. A. DE COTTES,
County Solicitor.

Sworn to and subscribed before me this 11th day of November, A. D. 1912.

(Signed) L. WICHTENDAHL,
[SEAL.] *Clerk of the Criminal Court.*

That based upon said information a warrant for the arrest and detention of your petitioner was issued out of the aforesaid Criminal Court of Record of Orange County, and served upon your petitioner, and is one of the warrants upon which your petitioner is now being held as aforesaid, which said warrant is as follows, to-wit:

6 The State of Florida to all and singular the sheriffs of the State of Florida, Greeting:

You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Court-House, on the 13th day of Nov. 1912, to answer unto the State of Florida on an information filed against him by the County Solicitor for the county of Orange, for shipping Immature Fruit and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court and the seal of said

Court, at the Court-House at Orlando aforesaid, on the 12th day of Nov. A. D. 1912.

[SEAL.] (Signed) L. WICHTENDAHL, *Clerk.*

And upon the back of said warrant is the return of J. A. Kirkwood, as Sheriff, as aforesaid, as follows, to-wit:

Rec'd this writ on Nov. 12th, 1912, executed the same on Nov. 13th, A. D. 1912, by arresting the within named Defendant, S. J. Sligh, and having him in custody.

(Signed) J. A. KIRKWOOD, *Sheriff.*

That the third of said informations upon which a warrant of arrest has been issued and served upon your petitioner, and under which he is now in custody, as aforesaid, charges your petitioner with shipping from the County of Orange and State of Florida, one car of immature oranges to S. J. Sligh & Company, at and in the City of Waycross, State of Georgia, the same being a point outside of and beyond the limits of the State of Florida, which said information is as follows, to-wit:

In the Criminal Court of Record of the County of Orange and State of Florida, November Term, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

THE STATE OF FLORIDA
vs.
S. J. SLIGH.

Information for Shipping Immature Oranges.

In the name and by the Authority of the State of Florida: Geo. A. De Cottes, County Solicitor for the County of Orange prosecuting for the State of Florida, in the said County, under oath, in-
7 formation makes that S. J. Sligh of the County of Orange and State of Florida, on the 16th day of October in the year of our Lord one thousand nine hundred and twelve in the County and State aforesaid, did ship to S. J. Sligh & Company, at Waycross, Georgia, one car of immature oranges, the same being Citrus Fruits.

And the said Geo. A. De Cottes, County Solicitor, as aforesaid, prosecuting as aforesaid, under oath further information makes that the said S. J. Sligh on the 16th day of October A. D. 1912, in the County and State as aforesaid, did deliver to an agent of the Tavares & Gulf Railway Company, a common carrier, for shipment to S. J. Sligh & Company, Waycross, Georgia, one car of oranges, which were Citrus Fruits, and which were then and there immature and unfit for consumption.

Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State of Florida.

(Signed) GEO. A. DE COTTES.
County Solicitor, Orange County, Florida.

STATE OF FLORIDA,
County of Orange:

Personally appeared before me, Geo. A. De Cottes, County Solicitor for Orange County, Florida, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged.

(Signed) GEO. A. DE COTTES,
County Solicitor.

Sworn to and subscribed before me this 11th day of November, A. D. 1912.

(Signed) L. WICHTENDAHL,
[SEAL.] *Clerk of the Criminal Court.*

That upon the filing of the aforesaid information by George A. De Cottes, County Solicitor of Orange County, a warrant for the arrest and detention of your petitioner was issued out of the aforesaid Criminal Court of Record for Orange County, and served upon your petitioner by the said J. A. Kirkwood, Sheriff of said Orange County, State of Florida, which said warrant is in words and figures as follows; to-wit:

The State of Florida to all and singular the Sheriffs of the State of Florida, Greeting:

8 You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Court House at Orlando, on the 13th day of Nov. 1912, to answer unto the State of Florida, on an information filed against him by the County Solicitor for the County of Orange, for shipping Immature Fruit, and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court, and the seal of said court, at the Court-House, at Orlando, aforesaid, on this 12th day of Nov. A. D. 1912.

(Signed) L. WICHTENDAHL, *Clerk.*

And upon the back of said warrant is the following return made by the said J. A. Kirkwood, Sheriff of Orange County, to-wit:

Rec'd this writ on Nov. 12th, 1912, Executed the same on Nov. 13th, A. D. 1912, by arresting the within named defendant, S. J. Sligh and having him now in custody.

(Signed) J. A. KIRKWOOD, *Sheriff.*

Your petition further represents that one car of oranges shipped, as aforesaid, by himself from the County of Orange and State of Florida, to Winecoff & Adams, at Birmingham, Alabama, consisted of three hundred boxes or crates of oranges, which were valuable articles of commerce and of the value of more than $300.00, and that the same were actually sold to the said Winecoff & Adams, at

and in the City of Birmingham, and State of Alabama, by your petitioner for a sum of more than $300.00 in money of the United States of America. Your petitioner further represents unto your Honor that the shipment of oranges as alleged in the second information above set forth, consisting of fifty boxes of oranges, shipped by himself from the County of Orange and State of Florida, to Grantham Brothers at Savannah, Georgia, and beyond the limits of the State of Florida, were valuable articles of commerce, and fully worth one dollar for each and every box or crate thereof, and further the said oranges were sold by your petitioner to said Grantham Brothers at and in the City of Savannah and State of Georgia for more than the sum of $50.00 in money of the United States of America, for the said fifty boxes of oranges, and your petitioner further represents unto your honor that the shipment of oranges specified in the third information above set forth as being made by your petitioner from the County of Orange and State of Florida to S. J. Sligh & Company at and in the City of Waycross and State of Georgia, consisted of three hundred boxes or crates of oranges of a value of more than $1.00 per crate, and that said oranges were sold by your petitioner at and in the City of Waycross and State of Georgia, for a sum of more than $300.00 in money of the United States of America for the car of oranges aforesaid.

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Your petitioner further represents that each and every shipment of oranges made by him as set forth in each of the three foregoing informations shows upon the face of said informations that said shipments were made to points beyond the limits of the State of Florida, and outside of the State of Florida, and that each and every of said shipments was an interstate shipment controlled exclusively by the laws of Congress of the United States under and by virtue of Section 8 of Article one of the Federal Constitution, which provides that Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes. And other clauses of the Constitution of the United States, and your petitioner further represents that his arrest and detention by the said J. A. Kirkwood under and by virtue of the three aforesaid warrants based upon the three aforesaid informations in the Criminal Court of Orange County, Florida, is without any authority of law, and that the statute upon which said prosecutions are based is in conflict with the Constitution of the United States, and seeks within itself to govern and control commerce between the State of Florida and other States in the United States, which attempted authority is totally beyond the power and jurisdiction of the State Legislature of Florida.

To be relieved from which said detention and imprisonment your petitioner now applies to your Honor, praying that a writ of habeas corpus, to be directed to the said J. A. Kirkwood, as Sheriff and Jailer aforesaid, may issue in his behalf, pursuant to the statute in such cases made and provided, so that your petitioner may be forthwith brought before your Honor, to do, submit to and receive

what the law may require, and your petitioner will ever pray &c.

(Signed) S. J. SLIGH, *Petitioner.*

(Signed) CHARLES B. ROBINSON AND THOMAS PALMER,
Attorneys for Petitioner.

STATE OF FLORIDA,
County of Orange:

Personally appeared before me S. J. Sligh who being duly sworn on oath says he is the petitioner in the above and foregoing petition; that he has read the same and is acquainted with its contents, and that all the statements of facts, matters and things therein contained are true.

(Signed) S. J. SLIGH.

Sworn to and subscribed before me this 14th day of November, A. D. 1912.

(Signed) A. E. McDONALD,
[SEAL.] *Notary Public.*

And on the said 14th day of November, A. D. 1912, the court did make and issue its temporary writ of habeas corpus in said cause, which with the return of the Sheriff of Orange County duly made thereon is in words and figures following:

In the Circuit Court of the Seventh Judicial Circuit of the State of Florida in and for the County of Orange.

S. J. SLIGH
VS.
J. A. KIRKWOOD, as Sheriff, &c.

Petition for Writ of Habeas Corpus.

To J. A. Kirkwood, as Sheriff and Jailer of the County of Orange, State of Florida:

You are hereby commanded to have the body of S. J. Sligh, by you imprisoned and detained, as it is said, together with the time and cause of imprisonment and detention, by whatever name said S. J. Slight shall be called or charged, before James W. Perkins, the Judge of the Seventh Judicial Circuit of the State of Florida, at the City of De Land and County of Volusia, in the Seventh Judicial Circuit and State of Florida, immediately after being served with this writ, to be dealt with according to law; and have then and there this writ, with a return thereon of your doing in the premises.

(Signed) JAMES W. PERKINS,
Judge of the Seventh Judicial Circuit of the State of Florida.

11 I, J. A. Kirkwood, Sheriff and Jailer of the County of Orange and State of Florida, to whom this writ is directed, for return thereunto, say that I have the within named S. J. Sligh in my custody, and now bring his body before the Judge of this Honorable Court here as commanded; that the cause of his detention and imprisonment is three separate capiases and warrants for the arrest and detention of said S. J. Sligh, issued out of the Criminal Court of Record in and for Orange County, State of Florida, of which the following are true copies of said warrants, and the return made upon the same by myself as Sheriff of said County of Orange as follows, to-wit:

The State of Florida to all and singular the sheriffs of the State of Florida, Greeting:

You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Courthouse, at Orlando, on the 13th day of Nov. 1912, to answer unto the State of Florida on an information filed against him by the County Solicitor for the County of Orange, for shipping immature fruit, and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court, and the seal of said court, at the Court-House at Orlando aforesaid, on this 12th day of Nov. 1912.

[SEAL.] (Signed) L. WICHTENDAHL, *Clerk.*

Rec'd this writ on Nov. 12th, 1912, executed the same on Nov. 13th, A. D. 1912, by arresting the within named defendant, S. J. Sligh and having him now in custody.

(Signed) J. A. KIRKWOOD, *Sheriff.*

The State of Florida to all and singular the sheriffs of the State of Florida, Greeting:

You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Court-House, at Orlando, on the 13th day of Nov. 1912, to answer unto the State of Florida on an information filed against
12 him by the County Solicitor for the County of Orange, for shipping immature fruit and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court and the seal of said Court, at the Court-House at Orlando, aforesaid, on this 12th day of Nov. A. D., 1912.

(Signed) L. WICHTENDAHL, *Clerk.*

Rec'd this writ on Nov. 12th, 1912, Executed the same on Nov. 13th, A. D. 1912, by arresting the within named defendant S. J. Sligh and having him now in custody.

(Signed) J. A. KIRKWOOD, *Sheriff.*

The State of Florida to all and singular the sheriffs of the State of Florida, Greeting:

You are hereby commanded to take S. J. Sligh and him safely keep, so that you have his body before the Judge of our Criminal Court of Record of the State of Florida, for the County of Orange, at the Court-House at Orlando, on the 13th day of Nov. 1912, to answer unto the State of Florida, on an information filed against him by the County Solicitor for the County of Orange, for Shipping immature fruit, and have you then and there this writ.

Witness L. Wichtendahl, Clerk of said Court and the seal of said court, at the Court-House at Orlando aforesaid, on this 12th day of Nov. A. D. 1912.

(Signed) L. WICHTENDAHL, *Clerk.*

Rec'd this writ on Nov. 12th, 1912, executed the same on Nov. 13th, A. D. 1912, by arresting the within named defendant, S. J. Sligh, and having him now in custody.

(Signed) J. A. KIRKWOOD, *Sheriff.*

All of which is hereby submitted to this Honorable Court.

(Signed) J. A. KIRKWOOD,
Sheriff and Jailer of Orange County, State of Florida.

And on the 16th day of November A. D. 1912, the said petition having been so presented and temporary writ issued and the petitioner being before the court in the custody of the Sheriff of Orange County, as set out in said return, and the Court having fully heard said matter, made its order and decree dismissing the petition and remanding the petitioner to the custody of the Sheriff of
13 Orange County, which order is in words and figures following:

In the Circuit Court of the Seventh Judicial Circuit in and for Orange County and State of Florida.

In the Matter of the Application of S. J. SLIGH for Writ of Habeas Corpus.

Be it remembered, that on this 16th day of November A. D. 1912, in obedience to the writ of habeas corpus heretofore allowed by me in this behalf, J. A. Kirkwood, Sheriff and Jailer of said County, to whom the said writ was directed appeared before me at De Land, Florida, having with him the body of the said S. J. Sligh, together with the said writ and the return of him the said J. A. Kirkwood thereon. And this cause coming on to be heard upon the petition for the writ and the return to the same and the respective parties having been heard, and the court having duly considered the same and being fully advised in the premises; and it appearing that the said S. J. Sligh, at the time of the issuing and serving of the said writ, was lawfully detained by the said J. A. Kirkwood, Sheriff and

Jailer as aforesaid, for the cause set forth in the said return; and it further appearing that the — S. J. Sligh ought not to be discharged, but ought to be remanded to the custody of the said J. A. Kirkwood; and I do hereby order that the said S. J. Sligh be remanded to the custody of the said J. A. Kirkwood, Sheriff and Jailer as aforesaid, and the said petition be and is hereby dismissed.

Done and ordered this the 16th day of November, A. D. 1912.

(Signed) JAS. W. PERKINS, *Judge.*

And on the 16th day of November, 1912, the complainant presented before the said Judge his petition for issuance of writ of error, and the court did order writ of error to issue in said cause, which petition and order thereon are in words and figures following, to-wit:

In the Orange County Circuit Court, 7th Judicial Circuit of Florida.

S. J. SLIGH
vs.
JAMES A. KIRKWOOD, as Sheriff and Jailer of Orange County, Florida.

Habeas Corpus.

14 To the Honorable James W. Perkins, judge of the above-styled court:

Your petitioner, S. J. Sligh, having been remanded to the custody of the Sheriff of Orange County under the order made by this Honorable Court in the above styled cause denying your petitioner's application for writ of habeas corpus herein and dismissing his petition, prays that your Honor will grant writ of error for the review of said cause by the Supreme Court of Florida in accordance with Section 2257 of the General Statutes of Florida.

(Signed) THOMAS PALMER,
CHAS. B. ROBINSON,
Attorneys for Petitioner.

The foregoing petition coming on this day to be heard and the petitioner being entitled as a matter of right to the issuance of a writ of error as prayed therein, the said — is hereby granted in accordance with Section 2257 of the General Statutes of Florida, and the Clerk of this Court is hereby directed to issue a writ of error as prayed therein, the same to be issued and attested in accordance with law, this November 16th.

(Signed) JAS. W. PERKINS,
Judge of the Circuit Court, 7th Judicial Circuit of Florida, for Orange County.

And on the 18th day of November, 1912, the complainant filed his præcipe with the Clerk of the Circuit Court for Orange County for writ of error in words and figures as follows:

In the Circuit Court, Seventh Judicial Circuit, State of Florida, County of Orange.

S. J. SLIGH

VS.

J. A. KIRKWOOD, as Sheriff, etc.

Petition for Habeas Corpus.

Præcipe for Writ of Error.

The clerk will please issue writ of error in the above styled cause in accordance with the order of the Judge of this court heretofore made, and make the same returnable to the present term of the Supreme Court of Florida, the 19th day of December A. D. 1912.

(Signed) THOMAS PALMER,
CHAS. B. ROBINSON,
Attorneys for Petitioner.

15 And on the 18th day of November, 1912, writ of error issued which was duly recorded in the minutes of the Circuit Court in Minute Book O, at page 35, on the 18th day of November, 1912.

The record of said writ of error is in words and figures as follows, to-wit:

STATE OF FLORIDA, *ss:*

The State of Florida to the Judge of the Circuit Court of the Seventh Judicial Circuit of the State of Florida, Greting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between S. J. Sligh as Plaintiff and Jas. A. Kirkwood, as Sheriff, &c., as Defendant, manifest error hath happened, as it is said, to the great damage of the said S. J. Sligh as by his complaint appears, we, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid with all things touching them, under your seal, together with this writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the 19th day of December, A. D. 1912, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness the Honorable James B. Whitfield, Chief Justice of the said Supreme Court, and the seal of said Circuit Court, this 18th day

of November, in the year of our Lord one thousand nine hundred and twelve.

(Signed) B. M. ROBINSON,
Clerk of the Circuit Court of Orange County.

[Official Seal.]

And on the 13th day of December, A. D. 1912, the complainant filed his assignment of errors which is in words and figures following:

In the Circuit Court, Seventh Judicial Circuit, State of Florida, County of Orange.

16 S. J. SLIGH
vs.
JAMES A. KIRKWOOD, as Sheriff and Jailer of Orange County, Florida.

Habeas Corpus.

Assignment of Errors.

And now comes the said S. J. Sligh, appellant, by Thomas Palmer and Charles B. Robinson, his attorneys, and says that in the record and proceedings and in the rendition of the judgment and decree in said cause there is manifest error, and assigns as errors the following:

1st. The court below erred in its final order dismissing petition and remanding the petitioner, S. J. Sligh, to the custody of the Sheriff of Orange County.

2nd. The court below erred in its finding that said petitioner, S. J. Sligh, was lawfully detained by said Sheriff and jailer of Orange County.

3rd. The court erred in not declaring unconstitutional the statute under which the said petitioner was informed against and held in custody, the same being in violation of the interstate commerce clause of the Constitution of the United States.

(Signed) THOMAS PALMER,
CHARLES B. ROBINSON,
Attorneys for Appellant.

STATE OF FLORIDA,
County of Orange:

On this day personally appeared before me Charles B. Robinson who being duly sworn says that he is of counsel for appellant in the above styled cause; that he has this day within five days after filing the foregoing assignment of errors in the clerk's office in the Circuit Court of Orange County, Florida, sent true copies thereof by United States mail, securely sealed, plainly addressed, and with full postage prepaid, to the following persons; George A. De Cottes, County

Solicitor of Orange County, John C. Jones, Esq., State Attorney, Seventh Judicial Circuit of Florida, the Attorney General of the State of Florida, at Tallahassee, Florida, Lessrs. L. G. Starbuck and Charles B. Parkhill, of Counsel for Appellee.

17 (Signed) CHARLES B. ROBINSON.

Sworn to and subscribed before me, this 13th, day of December, A. D. 1912.

A. E. McDONALD,

[SEAL.] *Notary Public, State of Florida at Large.*

My Commission expires Nov. 13th, 1915.

And on said 13th, day of December, A. D. 1912, the complainant filed with his assignment of errors his directions to the clerk for making up the transcript in said cause, which directions are in words and figures following:

In Circuit Court, Seventh Judicial Circuit, State of Florida, County of Orange.

S. J. SLIGH

vs.

JAMES A. KIRKWOOD, as Sheriff and Jailer of Orange County, Florida.

Habeas Corpus.

Directions to Clerk for Making Up Transcript.

The clerk will please make up transcript of record in the above styled cause, and copy and make a part of transcript the following papers and proceedings:

1st. Petition of S. J. Sligh for Habeas Corpus.

2nd. The temporary writ of habeas corpus and the return of the respondent, the Sheriff of Orange County, thereon.

3rd. The final order of the court dismissing the petition and remanding the prisoner to the custody of the Sheriff.

4th. The petition to the Judge of the Circuit Court for issuance of writ of error and order of the court thereon.

5th. The præcipe for writ of error.

6th. Recite the date of issuance and book and page of record of writ of error and copy record of writ of error.

7th. Assignment of errors.

8th. Copy these directions to the clerk for the making up of transcript.

Omit all other papers.

The said cause being one of habeas corpus, the clerk will please

18 begin making up the said transcript instanter or as soon as cross directions for making up of said transcript have been filed.

(Signed) THOMAS PALMER,
CHAS. B. ROBINSON,
Attorneys for Appellant.

STATE OF FLORIDA,
County of Orange:

On this day personally appeared before me Charles B. Robinson, who being duly sworn says that he is of counsel for appellant in the above styled cause; that he has this day within five days after filing the foregoing directions to the clerk for making up transcript of record in the clerk's office in the Circuit Court of Orange County, Florida, sent true copies thereof by United States mail, securely sealed, plainly addressed, and with full postage prepaid, to the following persons: George A. De Cottes, County Solicitor of Orange County, John C. Jones, Esq. State Attorney Seventh Judicial Circuit of Florida, the Attorney General of the State of Florida at Tallahassee, Florida, Messrs. L. G. Starbuck and Charles B. Parkhill, of Counsel for appellee.

(Signed) CHAS. B. ROBINSON.

Sworn to and subscribed before me, this 13th, day of December, A. D. 1912.

(Signed) A. E. McDONALD,
[SEAL.] *Notary Public, State of Florida at Large.*

My commission expires Nov. 13th, 1915.

And on December 13th, 1912, the defendant filed his cross-directions to the clerk with regard to making up of said transcript which are in words and figures following:

In Circuit Court, Seventh Judicial Circuit, State of Florida, County of Orange.

S. J. SLIGH
vs.
JAMES A. KIRKWOOD, as Sheriff and Jailer of Orange County, Florida.

Habeas Corpus.

Cross-directions to Clerk for Making Up Transcript.

The appellant having included in his directions to the clerk all papers and proceedings in said cause, the appellee desires nothing further included in the transcript except that the clerk is requested to copy in said transcript these cross directions.

____ ____,
____ ____,
Attorneys for Appellee.

19 *Certificate of Clerk.*

I, B. M. Robinson, Clerk of the Circuit Court in and for the County of Orange, State of Florida, do hereby certify that the foregoing pages numbered from 1 to 23 inclusive contain a correct transcript of the record of the judgment in the case of S. J. Sligh, complainant, against James A. Kirkwood, as Sheriff and Jailer of Orange County, defendant, in the matter of the petition of the said S. J. Sligh for habeas corpus, and a true and correct recital and copy of all such papers and proceedings in said cause as appears upon the records and files in my office that have been directed to be included in said transcript by the written demands of the parties.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 9th, day of December, A. D. 1912.

[SEAL.]

B. M. ROBINSON,
Clerk of the Circuit Court of the County of Orange, State of Florida.

Certificate of Payment of Costs.

I, B. M. Robinson, Clerk of the Circuit Court of Orange County, Florida, do hereby certify that the appellant, S. J. Sligh, has duly paid all costs which have accrued in and about the above styled cause to date of issuance of writ of error and including cost of this transcript.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court, this 9th, day of December, A. D. 1912.

[SEAL.]

B. M. ROBINSON,
Clerk of the Circuit Court of Orange County, Florida.

And thereafter, on the 7th, day of February A. D. 1913, said cause having been submitted to the Supreme Court of Florida, upon the transcript of record and argument of counsel for the respective parties, said Supreme Court filed its opinion in said cause, in the words and figures following, to-wit:—

20 In the Supreme Court of Florida, January Term, A. D. 1913.

S. J. SLIGH, Plaintiff in Error,

v.

JAMES A. KIRKWOOD, as Sheriff of Orange County, Defendant in Error.

Orange County.

TAYLOR, *J.:*

The Florida legislature at its session in the year A. D. 1911, enacted the following statute:

"Chapter 6236, Entitled:

An Act to Prohibit Certain Dispositions of Citrus Fruits Which Are Immature or Otherwise Unfit for Consumption, and the Misbranding of Citrus Fruits.

Be it enacted by the legislature of the State of Florida:

SECTION 1. That it shall be unlawful for anyone to sell, offer for sale, ship or deliver for shipment any citrus fruits which are immature or otherwise unfit for consumption, and for anyone to receive any such fruits under a contract for sale, or for the purpose of sale, or of offering for sale, or for shipment or delivery for shipment. This section shall not apply to sales or contracts for sale of citrus fruits on the trees under this section; nor shall it apply to common carriers or their agents who are not interested in such fruits and who are merely receiving the same for transportation.

SEC. 2. It shall be unlawful for anyone to misbrand any package or any wrapper containing citrus fruits; and all citrus fruits shall be deemed misbranded if the package or the wrapper shall bear any statement, design or device regarding the fruit therein contained which is false or misleading either as to the name, size, quality or brand of such fruit, or as to the locality in which it was grown.

SEC. 3. Whoever shall violate any of the provisions of this Act shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, and the fruit, whether immature or
21 otherwise unfit for consumption or misbranded shall be subject to seizure and disposition as in the case of adulterated or misbranded foods and drugs."

"Approved June 5th, 1911."

For alleged violations of this statute the plaintiff in error was informed against in the Criminal Court of Record of Orange County by three several informations each of them containing two counts, the first count in each of them charging him with the shipment to parties in another State of immature oranges, the same being citrus fruit; the second count of each of them charging him with the delivery to an agent of a common carrier for shipment to the same parties in another State of the same alleged immature oranges, which oranges are therein alleged to be citrus fruit and to be immature and unfit for consumption.

The plaintiff in error was arrested upon three several warrants issued from these informations and detained in custody by the sheriff, and applied to the Circuit Judge of Orange County for and obtained a writ of habeas corpus. In his petition for the writ he alleges that the statute above quoted upon which said prosecutions *are* arrest are based is in conflict with Section 8 of Article One of the Federal Constitution, and seeks within itself to govern and control commerce between the State of Florida and other States in the United States, which is beyond the power and jurisdiction of the State Legislature of Florida to do.

On the hearing of the habeas corpus proceeding the Circuit Judge remanded the plaintiff in error to the custody of the sheriff and dismissed the petition for the writ. For review of this judgment the plaintiff in error brings his case here by writ of error.

In the exhaustively considered case of Southern Ry. Co. v. Railroad Commission of Indiana, rendered by the Supreme Court of Indiana on January 3, 1913, — Ind. —, 100 N. E. Rep. 337, the following general propositions are said to be regarded as settled: "First. That the power of regulating commerce among the States is in Congress, and the subject of exclusive Federal Control."

"Second. That when Congress does act, and its action covers the subject-matter, its action is exclusive as to interference."

22 "Third. Until, and unless Congress does act, and its action covers the subject-matter, the States may act."

"Fourth. That so long as the action of the States is not repugnant to, or does not interfere with, or place burdens upon, or undertake to regulate, interstate commerce, or are mere police regulations, their action, though in aid, or if in aid, of interstate commerce, is not invalid, unless it is a direct interference."

"Fifth. That it is not enough to render the State law invalid that it is similar to the Federal act upon the same subject. It must in operation interfere directly or substantially with interstate commerce, and not be an incidental or casual interference or remotely affect it hurtfully."

"Sixth. That, where both the acts of Congress and of the State make a defined act an offense, the commission of the act may be an offense against each, and punishable by each." See the cited case for the numerous cases both Federal and State supporting the quoted propositions.

In the case of Savage v. Jones, State Chemist of Indiana, 225 U. S. 501, it is held: "That while the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce, a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional because it may incidentially affect interstate commerce. And that no State statute which even affects incidentally interstate commerce is valid if it is repugnant to the Federal Food and Drugs Act of June 30th, 1906, the object of which is to prevent adulteration and misbranding and keep adulterated and misbranded articles out of interstate commerce. And that where an act of Congress relating to a subject on which the State may act also, limits its prohibitions, it leaves the subject open to State regulation as to the prohibitions that are unenumerated. And that the intent of Congress to supersede the exercise by the State of their police power will not be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State."

We do not think that the Florida statute is a direct interfer-

23 ence with interstate commerce or a burden upon, or prohibition against, the legitimate subjects of such commerce. It does incidentially affect such commerce by prohibiting immature citrus fruits produced within her borders from becoming the subjects

of shipment or sale, and this in obedience to the police duty and power to protect the public health. Except this incidentially we do not think that the act under discussion is an unwarranted interference with or burden upon interstate commerce.

Does the Florida statute in anywise conflict with the Food and Drugs Act of Congress of June 30th, 1906? By the sixth subdivision of section seven of the last named act, the prohibitions against vegetable substances, which as we interpret it would include citrus fruit, is that if it is in whole or in part filthy, decomposed or putrid, then it is debarred as a subject of commerce. Green or immature fruit may be as deleterious to health as the same fruit in an over-ripe or decomposed state. The Act of Congress debars the latter, but says nothing as to the former, thus leaving the field of deleterious immaturity of fruit open to be dealt with by the States. We do not think that the act in question conflicts with the interstate commerce clause of the Federal constitution or with any of the provisions of acts of Congress passed in pursuance thereof that have come to our attention, and the judgment of the Circuit Court, is, therefore, hereby affirmed at the cost of the plaintiff in error.

Shackleford, C. J., and Cockrell, Hocker, and Whitfield, JJ., concur.

24 On the 7th day of February 1913, the Supreme Court of Florida entered the following judgment upon the foregoing opinion:

S. J. SLIGH, Plaintiff in Error,
v.
J. A. KIRKWOOD, as Sheriff of Orange County, Florida, Defendant in Error.

Writ of Error to a Judgment of the Circuit Court within and for the County of Orange.

This cause having been submitted to the court at a former day of this term upon the transcript of the record of the judgment aforesaid, and argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment; it is therefore considered, ordered and adjudged by the court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered that the costs in this behalf be taxed against the plaintiff in error, which costs are taxed at the sum of Twelve and no/100 dollars; all of which is ordered to be certified to the court below.

The opinion of the court in this cause was this day read by Mr. Justice Taylor and ordered to be filed.

25 STATE OF FLORIDA,
County of Leon:

I, M. H. Mabry, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from one to twenty-three inclusive, contain true and correct copies of the transcript of record filed in the Supreme Court of the State of Florida, on the 10th day of January A. D. 1913, in the case of S. J. Sligh, Plaintiff in error, v. James A. Kirkwood, as Sheriff of Orange County, Florida, Defendant in error, and of the opinion of the Supreme Court of the State of Florida, filed in said cause on the 7th day of February A. D. 1913, and of the judgment of the said Supreme Court entered on said 7th day of February, 1913, as the same appears from the originals now on file and of record in my office.

Witness my hand and official seal at Tallahassee, the Capital, this the 19th day of May, A. D. 1913.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court, State of Florida.

26 Supreme Court of Florida.

S. J. SLIGH, Plaintiff,
vs.
J. A. KIRKWOOD, as Sheriff of Orange County, Florida, Defendant.

Habeas Corpus.

Assignment of Errors and Prayer for Reversal.

Now comes the above plaintiff and files his petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment:

The Supreme Court of Florida erred in holding and deciding that section one of chapter 6236 of the Laws of Florida, enacted at the session of 1911, in so far as the same applies to interstate shipments, is valid. The validity of said section was denied and drawn in question by the plaintiff on the ground that it is repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Florida erred in holding and deciding—

First. That section one of chapter 6236, in so far as the same applies to interstate shipments, is not in conflict with and does not contravene section 8, of article 1 of the United States constitution, which provides that "The Congress shall have the power * * * to regulate commerce with foreign nations and among the several states and with the Indian tribes."

27 Second. That the Plaintiff, S. J. Sligh, was and could be

legally held in custody for the alleged violation of said section one of chapter 6236, Laws of Florida, upon and for an alleged shipment of citrus fruits out of and beyond the limits of the State of Florida, the validity of said section being denied and drawn in question by the said Plaintiff, S. J. Sligh, on the ground that the said section is repugnant to and in contravention of said Section 8 of Article 1 of the Constitution of the United States.

For which errors the Plaintiff, S. J. Sligh, prays that said judgment of the Supreme Court of the State of Florida be reversed and a judgment rendered in favor of the Plaintiff, S. J. Sligh, and for costs.

E. J. L'ENGLE,
CHAS. B. ROBINSON,
Attorneys for S. J. Sligh.

28 [Endorsed:] Supreme Court of Florida. S. J. Sligh, Plaintiff, vs. J. A. Kirkwood, as Sheriff of Orange County, Florida, defendant. Assignment of errors and prayer for reversal. Filed April 12, 1913. M. H. Mabry, Clerk.

29 Supreme Court of Florida.

S. J. SLIGH, Plaintiff,
vs.
J. A. KIRKWOOD, as Sheriff of Orange County, Florida, Defendant.

Habeas Corpus.

Petition for Writ of Error.

Considering himself aggrieved by the final decision of the Supreme Court in rendering judgment against him in the above entitled case, the plaintiff hereby prays a writ of error from said decision and judgment, to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

E. J. L'ENGLE,
CHAS. B. ROBINSON,
Attorneys for Plaintiff.

Assignment of Errors herewith.

STATE OF FLORIDA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by S. J. Sligh to the Governor of the State of Florida and his successors in office, in the sum of One Thousand Dollars, such bond when approved to act as a supersedeas.

Dated April 12th, 1913.

THOMAS M. SHACKLEFORD,
Chief Justice Supreme Court of Florida.

30 [Endorsed:] Supreme Court of Florida. S. J. Sligh, Plaintiff, vs. J. A. Kirkwood, as Sheriff of Orange County, Florida, defendant. Petition for Writ of Error. Filed April 12, 1913. M. H. Mabry, Clerk.

31 S. J. SLIGH, Plaintiff in Error,
vs.
JAMES A. KIRKWOOD, as Sheriff of Orange County, Florida, Defendant in Error.

Bond.

Know all men by these presents, That we, S. J. Sligh, as Principal, and James A. Knox, and T. J. Watkins, as sureties are held and firmly bound unto the Governor of the State of Florida, and his successors in office, and unto James A. Kirkwood, as Sheriff of Orange County, and his successors in office, in the full and just sum of One Thousand Dollars, to be paid to the said The State of Florida and James A. Kirkwood as Sheriff of Orange County, or his successors in office, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 29th day of April in the year of our Lord One Thousand Nine Hundred and Thirteen.

Whereas, the above named Plaintiff in error seeks to prosecute his writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Florida;

Now therefore, the condition of this obligation is such that if the above named Plaintiff in error shall prosecute his writ of error to effect and answer all costs that may be adjudged if he shall fail to make good his plea, then this obligation to be void, else to remain in full force and effect.

S. J. SLIGH. [SEAL.]
JAS. A. KNOX. [SEAL.]
T. J. WATKINS. [SEAL.]

Signed, sealed and delivered in presence of
C. B. ROBINSON.
A. E. McDONALD.

STATE OF FLORIDA,
County of Orange:

On this day personally appeared before me James A. Knox and T. J. Watkins, who being each duly sworn on oath depose
32 and say; we are each of lawful age and are citizens of the State of Florida, and know the contents of the foregoing instrument to which we have attached our names, and we, each for

himself, say that we are worth the sum of One Thousand Dollars over and above all debts, liabilities and exemptions.

JAS. A. KNOX.
T. J. WATKINS.

Subscribed and sworn to before me this 29th day of April A. D. 1913.

[SEAL.] A. E. McDONALD,
Notary Public, State of Florida at Large.

My commission expires Nov. 13, 1915.

Bond approved and to operate as a supersedeas this May 1st, 1913.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of Florida.

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Florida before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between S. J. Sligh and James A. Kirkwood as Sheriff of Orange County, Florida, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Consti-
34 tution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said S. J. Sligh as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 1st day of May, in the year of our Lord one thousand nine hundred and thirteen.

[Seal U. S. Circuit Court, Northern District of Florida.]

F. W. MARSH,
Clerk of the Circuit Court of the United States, Northern District of Florida,
By GUYTO P. McCORD, *Dep. Cl'k.*

Allowed by
THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of Florida.

35 STATE OF FLORIDA,
County of Leon:

I, M. H. Mabry, Clerk of the Supreme Court of the State of Florida do hereby certify that the original bond and a copy of the writ of error in the case of S. J. Sligh, Plaintiff in error, v. James A. Kirkwood, as Sheriff of Orange County, Florida, is now on file in my office.

Witness my hand and official seal at Tallahassee, the capital, this May 19th 1913.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court, State of Florida.

36 UNITED STATES OF AMERICA, *ss:*

To Honorable Charles B. Parkhill, attorney for defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Florida, wherein S. J. Sligh is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of Florida, this first day of May, in the year of our Lord one thousand nine hundred and thirteen.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of Florida.

Attest:

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court of Florida.

TAMPA, FLORIDA, May 5th, 1913.

I, Attorney of record for Defendant in Error in the above entitled cause, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

CHARLES B. PARKHILL,
Attorney for James A. Kirkwood, as Sheriff of Orange County, Defendant in Error.

37 [Endorsed:] In the Supreme Court of the United States. S. J. Sligh, Plaintiff in Error, vs. J. A. Kirkwood, as Sheriff, Defendant in Error. Citation.

38 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Florida, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Florida, in the City of Tallahassee, this the 19th day of May A. D. 1913.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk Supreme Court of Florida.

Costs of transcript $6.50, Paid by S. J. Sligh.

M. H. MABRY,
Clerk Supreme Court of Florida.

Endorsed on cover: File No. 23,724. Florida Supreme Court. Term No. 185. S. J. Sligh, plaintiff in error, vs. James A. Kirkwood, as sheriff of Orange County, Florida. Filed May 31st, 1913. File No. 23,724.

2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 185.

S. J. SLIGH, PLAINTIFF IN ERROR,

vs.

JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR.

E. J. L'ENGLE,
CHARLES B. ROBINSON,
Attorneys for Plaintiff in Error.

(23,724)

(23,724)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 185.

S. J. SLIGH, PLAINTIFF IN ERROR,

vs.

JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

STATEMENT OF FACTS.

The facts shown by the transcript are that the plaintiff in error, Sligh, was informed against in three informations in the Criminal Court of Record of Orange County, Florida, each information charging him with a violation of section 1, chapter 6236 of the Laws of Florida, enacted in the Florida Legislature of 1911, which section 1 is as follows:

> "SECTION 1. That it shall be unlawful for any one to sell, offer for sale, ship or deliver for shipment any

> citrus fruits which are immature or otherwise unfit for consumption, and for any one to receive any such fruits under a contract of sale, or for the purpose of sale, or of offering for sale, or for shipment or delivery for shipment. This section shall not apply to sales or contracts for sale of citrus fruits on the trees under this section; nor shall it apply to common carriers or their agents who are not interested in such fruits and who are merely receiving the same for transportation."

In said informations he is charged under said section with shipping to points *beyond the limits of the State of Florida* immature oranges. The record shows that all of the fruit involved was shipped beyond the limits of the State of Florida, and was valuable, having been sold by Sligh beyond the limits of the State for more than one dollar per box, thereby establishing its character as an article of commerce.

Sligh was arrested on warrants based on the said three informations and taken into custody by James A. Kirkwood, as sheriff, defendant in error.

The plaintiff in error presented to the judge of the Orange County Circuit Court a petition for writ of *habeas corpus*, setting up the foregoing facts and asking for relief from imprisonment. The judge of said court issued a temporary writ of *habeas corpus* on said petition; the sheriff made his return thereon, setting up the said warrants as his authority for holding Sligh. The record shows that there was no dispute as to the foregoing facts. The said circuit court judge rendered judgment against the plaintiff in error, denied the writ of *habeas corpus*, and remanded him to the custody of the sheriff.

The plaintiff in error sued out a writ of error on November 18, 1912, to the Supreme Court of the State of Florida. The Supreme Court of the State of Florida, on February 7, 1913, handed down its opinion and its judgment, affirming the judgment of the said circuit court and taxing the costs in said cause against plaintiff in error.

The only question raised in said circuit court and in the Supreme Court of the State of Florida, and the only question to be presented here, is that of the unconstitutionality of section 1 of chapter 6236 of the Laws of Florida, quoted above, in so far as the same applies to shipments of fruit beyond the limits of the State of Florida. The claim made by the plaintiff in error below and in this court is that said section is in conflict with the Constitution of the United States.

Assignment of Errors.

The Supreme Court of Florida erred in holding and deciding—

First. That section 1 of chapter 6236, in so far as the same applies to interstate shipments, is not in conflict with and does not contravene section 8, of article 1 of the United States Constitution, which provides that "The Congress shall have the power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes."

Second. That the plaintiff, S. J. Sligh, was and could be legally held in custody for the alleged violation of said section 1 of chapter 6236, Laws of Florida, upon and for an alleged shipment of citrus fruits out of and beyond the limits of the State of Florida, the validity of said section being denied and drawn in question by the said plaintiff, S. J. Sligh, on the ground that the said section is repugnant to and in contravention of said section 8 of article 1 of the Constitution of the United States.

ARGUMENT.

Counsel for defendant in error, in the State Circuit Court and in the State Supreme Court, took the position and strenuously argued, as doubtless they will do here, that the act in question in this cause was a justifiable exercise by the State of Florida of its police power. This was the only argument offered by them to sustain this statute. Therefore, before presenting authorities bearing directly upon the unconstitutionality of this law, we ask the court's attention to the general question of police powers or police regulation. No court, so far as we can find, has undertaken to define police powers in hard-and-fast terms. This court has more than once declined to do so, saying it would determine the question upon each individual case.

Chief Justice Waite, in Stone *vs.* Miss., said:

> "Many attempts have been made in this court and elsewhere to define the police powers, but never with entire success; it is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself which will be in all respects accurate."
> 101 U. S. Sup. Ct., 814.

"Police power is defined," says Mr. Tiedeman on Limitation of Police Power, "or rather is circumscribed, as follows: This police power extends to the protection of life, limb, health, comfort and quiet of all persons, and the protection of all property within the State according to the maxim *'Sic utere tuo, ut alienum non lædas,'* it being of universal application, it of course must be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

Tiedeman's Limitation of Police Powers, pg. 4.

> "Strictly speaking, police power, a term which has relation to a power of organization of a system of reg-

> ulation tending to health, order, convenience, and comfort of the inhabitants, and to the prevention and punishment of injuries and offenses to the public." 31st Cyclopedia of Law, etc., p. 902.

The words "health, order, convenience, and comfort of the inhabitants," quoted above, apply solely to the inhabitants of the State whose power is questioned. This court, as late as January 5 of the present year (1914), in the case of Adams Express Company *vs.* New York, the opinion in which was written by Mr. Justice Hughes, 232 U. S. Rep., 14 (text, 31), said:

> "It is insisted that, under the authority of the State, the ordinances were adopted in the exercise of the police power. But that does not justify the imposition of a direct burden upon interstate commerce. Undoubtedly, the exertion of the power essential to assure needed protection to *the community* may extend incidentally to the operations of a carrier in its interstate business * * *. It must, however, be confined to matters which are appropriately of local concern. It must proceed upon the recognition of the right secured by the Federal Constitution. Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license. Crutcher *vs.* Kentucky, 141 U. S., 47, 58; Robbins *vs.* Shelby County Taxing District, 120 U. S., 489, 496; Leloup *vs.* Mobile, 127 U. S., 640, 645; Stoutenburgh *vs.* Hennick, 129 U. S., 141, 148; Rearick *vs.* Pennsylvania, 203 U. S., 507; International Text Book Co. *vs.* Pigg, 217 U. S., 91, 109; Oklahoma *vs.* Kansas Natural Gas Co., 221 U. S., 229, 260; Buck Stove Co. *vs.* Vickers, 226 U. S., 205, 215; Crenshaw *vs.* Arkansas, 227 U. S., 389; Minnesota Rate Cases, 230 U. S., 352, 401. As was said by this court in Crutcher *vs.* Kentucky, 141 U. S., p. 58, 'a State law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.'"

Again, as late as April 6 of the present year (1914), in the case of Kansas City Southern Railway Company *vs.* Kaw Valley Drainage District, 233 U. S. Reports, 75, text 79, this court said:

> "The decisions also show that a State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power. It repeatedly has been said or implied that a direct interference with commerce among the States could not be justified in this way."

In defining the police power we cannot lose sight of the natural right of the person to do with his own whatever he will:

> "The right of every man to do what he will with his own, not interfering with the reciprocal right of others, is among the fundamentals of our law." Cooley on Constitutional Limitations, 549, 550.
>
> "Whether there be other limitations or not, the most important and most clearly defined are to be found in the national and State Constitutions. Whenever an act of the legislature contravenes a constitutional provision it is void, and it is the duty of the courts so to declare it and refuse to enforce it." Tiedeman on Limitations of Police Power, sec. 2.

This court, in the leading case of Leisy *vs.* Harden, 135 U. S., 100; 34 Law Ed., 128, the opinion in which was written by Mr. Chief Justice Fuller, says:

> "And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons, and the protection of property so situated, yet a subject-matter, which has been confided exclusively to Congress by the Constitution, is not within the jurisdiction of the police powers of the State unless placed there by congressional action."

And the power here sought to be exercised has never been, and, in the very nature of the matter, cannot be delegated to the States by act of Congress without destroying the effect of the interstate commerce clause of the Federal Constitution, and this notwithstanding the fact that Congress may never have assumed express control by enacting any statute upon the subject. This point will be treated more fully below.

Constitutional Objection to Statute.

We most earnestly contend that the provision of the act of the Florida Legislature under consideration here (in so far as the same applies to shipments of citrus fruits beyond the limits of the State of Florida) seeks to limit, regulate, and control interstate commerce, and is directly in conflict with the Constitution of the United States and the general legislation of Congress enacted to give effect to the constitutional provision, for the National Constitution gives to Congress exclusive power to regulate commerce among the several States, and does so in the same clause and with the same power and effect as it gives to it the authority to regulate commerce with foreign nations and with the Indian tribes.

It is true that nearly all cases on this subject (and the reports are full of them) deal with importations into the State where the regulation is sought to be enforced. With the exception of a decision of the Supreme Court of the State of Vermont (which, of course, does not furnish necessarily any precedent for this court, but which we refer to briefly below), we find no case dealing with commodities shipped or attempted to be shipped from a State. But it has been universally held with reference to commodities shipped into a State that they are under the protection of the interstate commerce clause of the Federal Constitution not only until they have passed the State line, but until they have reached their destination and become mingled with other property in the State. We think that the constitutional

provision is the same with regard to exports that it is with imports, except in this: that an attempt of a State to limit, prohibit, or restrict the exportation of articles of commercial value is, if possible, a far more flagrant violation of the Federal Constitution than is an attempt to regulate importations into the State. At least there is some shade of reason why a State, in exercise of its so-called police powers, might undertake to assume some control over interstate shipments of goods coming into that particular State to be used by its people in cases where it might consider that the mingling of the same with the property of the State is injurious to its inhabitants. But surely no good reason can be shown why the control of property having a commercial value and being exported from the State, where such property is to be used by the people of another State, over whom this State has no police jurisdiction, could possibly fall within the police powers of this State.

In the case of Leisy *vs.* Harden, quoted above, Chief Justice Fuller says:

> "When the subject-matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress and cannot be encroached upon by the State." Citing Cooley *vs.* The Board of Wardens, 12 How., 299.

Quoting further from the opinion in Leisy *vs.* Harden:

> "The power vested in Congress to regulate commerce with foreign nations and among the several States, is the power to prescribe the rules by which that commerce is to be governed and is a power acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts, and cannot be stopped at the external boundaries of a State."

Counsel for defendant in error argued below, and may perhaps argue here (though, we think, without foundation), that the State had the right to regulate the exportation of

citrus fruits under its alleged police power, because Congress had not directly assumed control of this subject by enacting express legislation thereon. How utterly wrong this contention is can be seen by a further examination of the case of Leisy *vs.* Harden, mentioned above, and other cases decided by this court down to and in the present year.

Quoting further from Leisy *vs.* Harden we find:

> "Whenever, however, a particular power of the general Government is one which must necessarily be exercised by it, and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but on the contrary the only legitimate conclusion is that the general Government intended that power should not be affirmatively exercised and the action of the States cannot be permitted to effect that which would be incompatible with such intention. Hence, inasmuch as interstate commerce consisting in the transportation, purchase, sale and exchange of commodities is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it, or allow the States so to do, it thereby indicates its will that such commerce shall be free and untrammeled." And see the numerous cases cited there.

The argument of counsel in the court below that the State was left free to enact this legislation because Congress had not specifically acted upon this subject was based exclusively upon what are known as the license cases reported in 5 Howard, page 504, relating to laws passed by the States of Massachusetts, New Hampshire, and Rhode Island in reference to the sale of spirituous liquors, in which cases the Supreme Court of the United States, in an opinion delivered by Chief Justice Taney, sustained the State's statute as a rightful exercise of police power, using this language:

> "Yet in my judgment, the State may, nevertheless, for the safety or convenience of trade, or the protection of the health of the citizens, make regulations of

commerce for its own ports and harbors and for its own territory, and such regulations are valid unless they come in conflict with a law of Congress."

These license cases, however, are distinctly overruled by the Supreme Court of the United States in the same case of Leisy *vs.* Harden, above quoted, and Chief Justice Fuller, in passing upon this very question, after commenting upon the former decision and quoting Judge Taney's language in full, has this to say:

> "But, conceding the weight properly to be ascribed to the judicial utterances of this eminent jurist, we are constrained to say that the distinction between subjects in respect of which there can be of necessity only one system or plan of regulation for the whole country, and subjects local in their nature, and, so far as relating to commerce, mere aids rather than regulation, does not appear to us to have been sufficiently recognized by him in arriving at the conclusion announced. That distinction has been settled by repeated decisions of this court, and can no longer be regarded as open to re-examination. After all it amounts to no more than drawing the line between the exercise of power over commerce with foreign nations and among the States and the exercise of power over purely local commerce and local concerns; the authority of Pierce *vs.* New Hampshire (the case above referred to) in so far as it rests on the view that the law of New Hampshire was valid because Congress had made no regulations on the subject, must be regarded as having been distinctly overthrown by the numerous cases hereinafter referred to."

And to the same effect we quote:

> "It is no answer to the objection that a State statute is a regulation of commerce by a State and forbidden by the Constitution to say that it falls within the police power of the State; for, to whatever class of legislative powers it may belong, it is prohibited to the State if granted exclusively to Congress by the Con-

stitution, and further subjects of interstate commerce are not within the police powers of a State unless placed there by congressional actions." Am. and Eng. Enc. of Law, new ed., volume 17, pg. 57. Citing Henderson *vs.* New York, 92 U. S., 259; Bowman *vs.* Chicago R. Co., 125 U. S., 492; Walling *vs.* Mich., 116 U. S., 465; also Leisy *vs.* Harden and many other cases.

The same doctrine was again announced by this court in the Minnesota Rate cases, decided June 9, 1913, U. S. Reps.. ~~236~~ 230, page 352; text, 396, in the following language:

> "These grounds are distinct. If a State enactment imposes a direct burden upon interstate commerce, it must fall regardless of Federal legislation. The point of such an objection is not that Congress has acted, but that the State has directly restrained that which in the absence of Federal regulation should be free."

Upon the same general principle is based the case of Bowman *vs.* Chicago and Northwestern Railroad Company, 125th U. S., page ~~480~~ 479, text, where the court uses this language:

> "Beyond all question, the transportation of freight or of the subjects of commerce for the purpose of exchange or sale, is a constituent of commerce itself. This has never been doubted and probably the transportation of articles from one State to another was the prominent idea in the minds of the framers of the Constitution when to Congress was committed the power to regulate commerce among the several States, a power to prevent embarrassing restrictions by any State was the thing desired."

And, again, in the same opinion, says the Supreme Court:

> "It would be absurd to suppose that the transmission of the subject of trade from the State to the buyer, or from the place of production to the market, was not contemplated, for without that there could be no consummated trade, either with foreign nations, or among the States, nor does it make any difference

> whether this exchange of commodities is by land or water. In either case the bringing of the goods from the seller to the buyer is commerce."
> (Text, p. 480.)

After holding that no tax could be placed upon goods thus being transported and citing authorities in support thereof the court above reaches this conclusion (text, p. 480):

> "And this conclusion was reached, notwithstanding the fact that Congress had not legislated on the subject, and notwithstanding the inference sought to be drawn from the fact that it was thereby left open to the legislature of the several States."

And citing the language of Mr. Justice Strong, speaking for the court in case quoted from, as follows:

> "Cases that have sustained State laws, alleged to be regulations of commerce among the States, have been such as relate to bridges or dams across streams wholly within a State; police or health laws or subjects of a kindred nature, not strictly of commercial regulation."

In the same opinion, page 483, this court said:

> "If the State has not power to tax freight and passengers passing through it, or to or from it, from or into another State, much less would it have the power directly to regulate such transportation or to forbid it altogether."

This last quotation, we submit, conclusively settles the question of the right of the State of Florida, through the act of 1911, to prohibit the shipping of any kind of freight out of the State of Florida, or in any manner to regulate or interfere with the same. But there is still another reason why it cannot be properly said that the enforcement of the statute in question is within the police power of the State. It is true that in this record there is no assignment of error specifically attacking the statute as being in conflict with the Fourteenth

Amendment to the National Constitution, which prohibits every State from making or enforcing laws which abridge the privileges or immunities of citizens of the United States, but since the so-called police power has been invoked in this matter we think it proper to cite here 18 Am. and Eng. Enc. of Law, 1st edition, page 763, from which we quote as follows:

> "Other constitutional limitations upon the police power of the State are seen in the clause providing that citizens of each State shall enjoy all the privileges and immunities of citizens of the several States, and that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

And see the various cases there cited.

In this connection we wish to call the attention of the court to the fact, which is a matter of common knowledge, that there are a number of other States than the State of Florida whose citizens are engaged in raising and exporting citrus fruits; for example, the States of California, Arizona, Texas, and Louisiana, the fruit growers in all of which States are natural competitors of the orange growers of Florida. None of the producers of citrus fruits in these other States are reached or can be reached, controlled or limited by the act of the Florida Legislature, but are free to ship and sell such products in any of the markets in the United States. It is unquestionably the right of the citizens of the State of Florida to compete in the open markets of the United States with the citizens of other States in the production of any article which has a market value and which is therefore a subject of interstate commerce, and surely it is the right of the citizens of other States to purchase that article without restriction being placed upon them (the citizens of other States) by the legislature of the State of Florida where that restriction in nowise tends to the protection locally of the health, morals, or safety of the citizens of Florida.

It is also a matter of common knowledge that many citrus fruits not only have a market value and are articles of com-

merce before they are fully ripened, but are absolutely unmarketable and not in condition to transport except when in an immature state; as, for instance, lemons and limes. And, again, immature oranges even are used for other purposes than for ordinary food; for instance, in the making of wine, citric acid, marmalade, and other articles. And yet, if this law be valid and constitutional, a citizen of the State of Florida may not ship lemons or limes in the ordinary state which makes them most marketable, nor may he ship oranges in the slightest degree immature for the purpose of making wines or citric acid or marmalade, or any other article, nor may a citizen of the State of New York purchase these articles in Florida and have them shipped to him, because of the restriction placed upon him, or attempted to be so placed, by the legislature of the State of Florida.

We know that the decision of a State supreme court is no precedent to be relied upon here, but since this court has never passed upon this question we venture to ask that this court consider for what it may be worth the careful analysis of identically the same question contained in the opinion of the Supreme Court of Vermont in the case of the State of Vermont *vs.* Peet, 80 Vt., 449; 68 Atl. Rep., 661; 14 L. R. A., N. S., 677. The question involved here is identical with that in the case at bar, save that in one case is involved shipment of immature oranges and in the other shipment of immature veal. In that case the court said that it was not within the province of the legislature of the State of Vermont to say that the citizens of other States should not have exported to them immature veal, whether such article was or was not dangerous to health. That it was not within the province of the legislature of the State of Vermont to protect the health and safety of the citizens of other States under the guise of police regulation.

We scarcely believe it possible that this court will place a construction upon the National Constitution which will permit interstate commerce in citrus fruits to be regulated by one law as to fruits shipped from Florida, by another law as

to fruits shipped from Louisiana, by still another law as to fruits shipped from California, and by no law or regulation whatsoever as to similar fruits shipped from still other States, when all of those fruits are going into the open market for the consumption of citizens of still other States.

Counsel for defendant in error may perhaps admit in his argument here, as he frankly admitted in the court below, that the act does not really seek to protect the life and health of citizens either here or elsewhere, but is designed to better the market and market conditions for citrus fruits. Possibly wise legislation looking to that end could be enacted, but it should be enacted by Congress of the United States and not by the legislature of the State of Florida.

E. J. L'ENGLE,
CHARLES B. ROBINSON,
Attorneys for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 185.

S. J. SLIGH, PLAINTIFF IN ERROR,

vs.

JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

CHARLES B. ROBINSON,
Attorney for Plaintiff in Error.

(23,724)

SUPREME COURT OF THE UNITED STATES.

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No. 185.

S. J. SLIGH, PLAINTIFF IN ERROR,

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JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

ERROR TO THE SUPREME COURT OF FLORIDA.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

The Supreme Court of Florida, in the very short opinion written by it (page 16 of printed transcript), after citing a decision of the Indiana State Supreme Court which is, we think, not in point, relied wholly upon the decision of this court in Savage *vs.* Jones, State Chemist of Indiana, 225 U. S., 501. A careful examination, however, of the opinion of this court in Savage *vs.* Jones will show that the facts involved were totally different from the facts in the case at bar in several important particulars. We respectfully submit that the opinion in Savage *vs.* Jones not only fails to

support the decision of the Florida Supreme Court, but does support the contention made by the plaintiff in error here.

In Savage *vs.* Jones the act charged to be unconstitutional as a State regulation of interstate commerce was an act passed by the General Assembly of the State of Indiana to regulate (but not control) the distribution of food stuffs *within that State* and brought into the State from other States. This is exactly the reverse of the situation under discussion in the case at bar.

The statute involved in Savage *vs.* Jones was a police regulation pure and simple, requiring simply that the importers of "concentrated commercial feeding stuffs" into the State of Indiana disclose the ingredients of such food stuffs and comply with certain other reasonable requirements. It was not attempted by this statute to prohibit the importation of such food stuffs, but simply to regulate their sale within the State of Indiana and to prohibie such sale only in case of fraud or adulteration. This was a police regulation purely for the protection of the inhabitants of the State where the statute was enacted. It had no relation whatsoever to the shipment of such food stuffs from that State, nor was it designed to protect citizens of other States from consumption of adulterated foods.

Mr. Justice Hughes, at page 525 of the opinion in Savage *vs.* Jones, emphasizes this doctrine by saying: "But when the local police regulation has real relation to the suitable protection of the people *of the State,* and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce." This doctrine is again emphasized on page 528 of the same opinion which refers again to "feeding stuffs offered for sale in the State," meaning, of course, the State of Indiana, whose statute was under discussion.

Has, then, the decision quoted by the Florida Supreme Court any analogy to the case at bar? Has the Indiana statute under discussion there any analogy to the Florida statute which attempted to absolutely prohibit the shipment

to other States and countries of goods which are unquestionably articles of commerce and which are unquestionably the subject of legitimate and proper barter and sale between citizens of the State of Florida and citizens of other States and countries? And even were unripe citrus fruits necessarily deleterious to health (a fact which, if it were true, is not shown by the record) does the opinion of this court in Savage *vs.* Jones in any way support the contention that the legislature of the State of Florida may, under a guise of police regulation, attempt to protect the health of the citizens of other States and countries? We think not.

Finally we ask, was the Florida Supreme Court fair to itself in its discussion of Savage *vs.* Jones *supra?* In its opinion, page 18 of the transcript, we find in quotation marks what purports to be a literal quotation from the opinion of this court in Savage *vs.* Jones as follows: "While the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional because it may incidentally affect interstate commerce." And what did this court really say in Savage *vs.* Jones? The nearest approach to the language quoted as above is found at page 525 of the text (25 U. S. Rep.) where this court said: "But when the *local* police regulation has real relation to the suitable protection of the people *of the State,* and is reasonable in its requirements it is not invalid because it may incidentally affect interstate commerce." The Florida court in making this quotation significantly omitted the word *"local"* and the words *"of the State"* found in the original text.

Respectfully submitted,

CHARLES B. ROBINSON,
Attorney for Plaintiff in Error.

Supreme Court of the United States

October Term, 1914

No. 185

S. J. SLIGH, Plaintiff in Error,

vs.

JAMES A. KIRKWOOD, As Sheriff of Orange County, Florida.

BRIEF FOR DEFENDANT IN ERROR

CHARLES B. PARKHILL,
Attorney for Defendant in Error

(23,724)

(23,724)

Supreme Court of the United States

OCTOBER TERM, 1914

No. 185

S. J. SLIGH, PLAINTIFF IN ERROR,
vs.
JAMES A. KIRKWOOD, AS SHERIFF OF ORANGE COUNTY, FLORIDA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA

The plaintiff in error, Sligh, was informed against in the Criminal Court of Record in Orange County, Florida, in three informations, one of which charges, in the first count, that said S. J. Slight did, on the 16th day of October, 1912, in the County and State aforesaid, ship to Winecoff & Adams, at Birmingham, Alabama, one car of immature oranges, the same being citrus fruits.

In another count of said information it was charged that the said S. J. Sligh did deliver to an agent of the Seaboard Air Line Railway Company, a common carrier, for shipment to Winecoff & Adams, Birmingham, Alabama, one car of oranges, which were citrus fruits, and which were then and there unfit for consumption. See Transcript of record, page 2.

In the first count of the second information it was charged that the said S. J. Sligh did ship to Grantham Brothers, at Savannah, Georgia, fifty (50) boxes of immature oranges, the same being citrus fruits. In the second count of this information it was charged that the said S. J. Sligh did deliver to an agent of the Seaboard Air Line Railway Company, a common carrier, for shipment to Grantham Brothers, Savannah, Georgia, fifty (50) boxes

of oranges which were citrus fruits, and which were then and there immature and unfit for consumption.

In the third information it was charged that the said S. J. Sligh did deliver to an agent of the Tavares & Gulf Railway Company, for shipment to S. J. Sligh & Company, at Waycross, Georgia, one car of oranges, which were citrus fruits, and were then and there immature and unfit for consumption.

Upon habeas corpus, the defendant, James A. Kirkwood, Sheriff of Orange County, Florida, filed his return, setting up that he held the defendant, Sligh, and that the cause of his detention and imprisonment was three separate capiases and warrants for the arrest of the said S. J. Sligh, issued out of the Criminal Court of Record in and for Orange County, as mentioned above. Upon hearing the Circuit Judge remanded Sligh. He sued out a writ of error to the Supreme Court of the State of Florida, and that Court affirmed the judgment of the lower court.

ARGUMENT

As stated by counsel for plaintiff in error, the only question presented here is that of the unconstitutionality of Section 1, Chapter 6236 of the Laws of Florida, 1911, the first section of which is as follows:

> "Section 1. That it shall be unlawful for any one to sell, offer for sale, ship or deliver for shipment any citrus fruits which are immature, or otherwise unfit for consumption, and for any one to receive any such fruits under a contract of sale, or for the purpose of sale, or of offering for sale or for shipment or delivery for shipment. This section shall not apply to sales or contracts for sale of citrus fruits on the trees, under this section; nor shall it apply to common carriers, or their agents, who are not interested in such fruits, and who are merely receiving the same for transportation."

This act is constitutional and a valid exercise of the police power of the State. It is designed to promote the public health, and the police power of the State embraces regulations for that purpose.

The power of the State to impose restraints upon persons and property in conservation and promotion of the public health, good order and prosperity is a power originally and always belonging to the States, not surrendered by them to the general government, not directly restrained by the Constitution of the United States, and essentially exclusive.

Wilkerson v. Roher, 140 U. S., 545, 35 L. Ed., 573.

The regulation of food stuff has in view the protection of health.

Freund Police Power, Chapter 28, 232.

The term "provisions" means "food." Oranges are highly nutritious and are food.

State v. Angello, 71 N. H. 224; 51 Atl. 905; 6 Words & Phrases, 5754.

Any substance which, taken into the body, is capable of sustaining or nourishing the living is food.

13 A. & E. Enc. of Law (2nd Ed.) 729; 3 Words & Phrases, 2856; Arbuckle v. Blackburn, 113 Fed., 616, 622.

The term "fruit" includes oranges.

Humphreys v. Union Ins. Co., (U. S.) 12 Fed. Cas., 876, 880; 4 Words & Phrases, 2994.

Section 1, Chapter 6336, Acts of 1911, Laws of Florida, now under consideration, provides that it shall be unlawful to sell, offer for sale, ship or deliver for shipment, any citrus fruits which are immature or otherwise unfit for consumption.

One of the informations filed against the plaintiff in error, Sligh, covers citrus fruits, which are not only immature, but otherwise unfit for consumption. Clearly this statute is designed to protect the public health.

As said by the court in Peo. v. Chiperly, 101 N. Y. 634, 4 N. E. 107:

> "Now an examination of the present law clearly shows that it relates to, and is appropriate to promote the public health. Whether its details are wise we do not know; but its object is evident and good. Its first section forbids the sale of unclean, impure, unhealthy, adulterated, or unwholesome milk."

But, it is contended that this statute is in controvention of the commerce clause of the Constitution of the United States. This statute does not, as contended by counsel for plaintiff in error, seek to limit, regulate and control interstate commerce.

To constitute interstate commerce there must be an article or commodity, the subject of commerce, and destined to pass from one State to another. Only such commodities as may *lawfully* become the subjects of purchase, sale or exchange, are articles of interstate commerce, within the protection of the commerce clause of the Constitution.

7 A. & E. Enc. of Law, (2nd Ed.) 67, 68.

In Turner v. Maryland, 107 U. S. 17 Attr. 38, 27 L. Ed. 370, text 376, the court said:

> "It was lawful to require the article to be subjected to the prescribed examination by a public officer before it can be a lawful subject of commerce. The State has a right to say what shall be lawful, merchantable tobacco."

Then the State of Florida has a right to say what shall be lawful, merchantable citrus fruits.

Articles which, on account of their existing condition, would bring and spread disease or pestilence, and meats or other provsions unfit for human use, are not legitimate subjects of trade and commerce, and are not within the protection of the commerce clause of the Constitution, but fall within the police power of the State.

17 A. & E. Enc. of Law, (2nd Ed.) 67, 68, and cases cited.

When the Legislature of Florida prohibits the sale or shipment of immature citrus fruits, or fruits unfit for consumption, it

thereby prevents said citrus fruits from becoming an article of interstate commerce.

In Peo. v. Hesterberg, 211 U. S. 31, 53 L. Ed. 75, this Court said:

> "The power of a State to protect, by adequate police regulation, its people against the adulteration of articles of food, although, in doing so, commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the State, which can become the subject of ownership in a qualified way, and which can never by the object of commerce except with the consent of the State, and subject to the conditions which it may deem best to impose for the public good."

In Dent v. West Virginia, 129 U. S. 114, the court said:

> "The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as deception and fraud."

In Plumely v. Massachusetts, 155 U. S. 461, 15 Sup. Ct. Rep. 154, the court said:

> "If there by any subject over which it would seem the States ought to have plenary control, and the power to legislate in respect to which, it ought not to be supposed, was intended to be surrendered to the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one State to another State."

In Purity Extract & T. Co. v. Lynch, U. S. Sup. Ct. Rep., Oct. Term, advances sheets No. 3, 57 L. Ed. U. S. Reports 184, 226 U. S. 192, the court said:

> "It is also well established that, when a State exerting its recognized authority, undertakes to suppress what it is

free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered is innocuous, it may not be included in a prohibition, the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government. With the wisdom of the exercise of that judgment the court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended."

In the case of State v. Harrub, 95 Ala. 176, 36 Am. Rep. 195, the Supreme Court of Alabama while considering a statute providing that it shall be unlawful for any person to ship beyond the limits of the State any oysters taken from the waters of that State while the same are in the shell, said:

> "Until it becomes an article of interstate commerce, Congress has no authority or control in the premises. * * * The error in the argument of the defendant's counsel is in assuming that the oyster in the shell was an article of commerce."

The power of Congress to regulate interstate commerce does not interfere with the right of the State to prohibit its own property from becoming an article or commodity of interstate commerce, and a statute may take private property out of the commerce clause of the Constitution, may outlaw such private property, if it be inherently bad or liable to affect the health, prosperity or welfare of the people of the State.

The police power of a State embraces regulations designed to promote the public convenience or the general prosperity or the public welfare, as well as those designed to promote the public safety or the public health.

Chicago B. & Q. R. R. Co. v. Peo. State of Ill. ex rel; Drainage Com'rs., 250 U. S. 561, 26 Sup. Ct. Rep. 341;

Lake Shore & M. S. Ry. Co. v. State of Ohio, 173 U. S. 285, 19 Sup. Ct. Rep. 465, 43 L. Ed. 702; A. C. L. Ry. Co. v. Coachman, 59 Fla. 130, 52 So. 377, 380.

In Commonwealth v. Savage, 29 N. E. Rep. 468, the court held:

> "A statute which prohibits the selling, offering for sale, etc., lobsters less than ten and one-half inches in length, applies to lobsters caught in and sent from the British possessions."

In the body of the opinion the court said:

> "The object of the Legislature was to protect the growth of lobsters in our own waters, and the Legislature no doubt thought that the most effectual way to accomplish that purpose was to make it penal for any person to have in his possession any lobsters under the length fixed by the statute. That such a law may in some cases operate harshly, if rigorously enforced, cannot be denied, but that is a matter with which we cannot deal. The fact that the lobsters were caught in and sent from the British provinces to the defendant, and that, as soon as discovered, those found to be of short length were returned alive in to tide-water by him, cannot avail him as a defense to the complaint."

Where a law is for the protection of the life, liberty and prosperity or the general welfare, there is no limitation upon the power of the Legislature except as is found in the Constitution.

Hawthorn v. Peo. 019 Ill. 302; 52 Am. Rep. 610.

The police power extends to regulations to preserve the reputation of the States in foreign markets.

Freund Police Power, Sec. 276; Critsman v. Northup 8 Cow. (N. Y.) 46.

The Legislature may have known that immature citrus fruits,

or citrus fruits unfit for consumption, shipped beyond the limits of the State of Florida would destroy the reputation of this important product of the State in the markets of the world. The Legislature may have also known that the taking of immature citrus fruits from the trees would injure the trees and thus hurt the prosperity of the people of the State. The Legislature may have known that the sale of immature oranges might cause the sale of immature and poor seed for the planting of orange groves, and thus hurt the prosperity of the State.

In Plumely v. Massachusetts, 155 U. S. 461, 15 Sup. Ct. Rep. 154, it was held that a law of the State of Massachusetts which prevented the sale of oleomargarine colored in the imitation of butter, was a legal exertion of police power on the part of the State, although oleomargarine was a wholesome article of food, transported from another State; and this upon the principle that the Constitution did not intend, in conferring upon Congress an exclusive power to regulate interstate commerce, to take from the States the right to make reasonable laws concerning the health, life and safety of the citizens, although such legislation might indirectly affect foreign or interstate commerce.

In Sherlock v. Alling, 93 U. S. 99, it was said:

> "And it may be said generally, that the legislation of a State, not directed against commerce or against any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon the citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or any other pursuit."

In Dent v. West, Virginia, 129 U. S. 114, the court said:

> "The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulations as, in its judgment, will secure or tend to secure them against the consequences of ignorance and incapacity as well as deception and fraud."

As stated in 17 Am. & Eng. Ency. of Law (2nd Ed.) 67, 68:

> "Only such commodities as may lawfully become the subjects of purchase, sale or exchange are articles of interstate commerce, within the protection of the commerce clause of the Constitution. Articles which, on account of their existing condition, would bring and spread disease or pestilence, and meats or other provisions unfit for human use are not legitimate subjects of trade and commerce and are not within the protection of the commerce clause of the Constitution, but fall within the police power of the State."

As stated in Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. Ed. 184:

> "The inquiry must be whether, considering the end in view, the statute passes the bound of reason and assumes the character of a merely arbitrary fiat."

For the reasons heretofore stated we submit the provisions of our Act of 1911 bear a reasonable relation to the evil sought to be cured, and this court will uphold same.

A late utterance of the United States Supreme Court on this subject will be found in Eubank v. City of Richmond, decided December 2nd, 1912, and reported in 226 U. S. 137, 33 S. Ct. Rep. 76, 57 L. Ed. 156, as follows:

> "Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. Chicago B. & Q. R. R. Co. v. Illinois, 200 U. S. 561, 50 L. Ed. 596, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175. And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable powers of the government'."

A statute of Vermont makes it unlawful to ship *out of the State*

for food purposes the flesh of a calf which is less than *four* weeks old when killed.

In State v. Peet, 80 Vt. 449, 68 Ata. 661, 130 Am. St. Rep. 998, 14 L. R. A. (U. S.) 678, the court held the indictment bad, because, under the Federal Act, the Secretary of Agriculture had issued regulations requiring the carcasses of calves under three weeks of age to be condemned.

As pointed out by the Supreme Court of Florida, in Sligh v. Kirkwood, the instant case, 65 Fla. 123, 61 So. Rep. 185, the statute now being considered does not conflict with the Food and Drugs Act of Congress of June 30, 1906, because the Act of Congress only bars fruit in an over-ripe or decomposed state, and says nothing as to green or immature fruit, and, as stated by the court, "green or immature fruit may be as injurious to health as the same fruit in an over-ripe or decomposed state."

In the case of Savage v. Jones, State Chemist of Indiana, 225 U. S. 501, 32 Sup. Ct. 715, 56 L. Ed. 1182, it is held:

> "That while the State cannot, under cover of exerting its police power, directly regulate or burden interstate commerce, a police regulation which has real relation to the proper protection of the people, and is reasonable in its terms, and does not conflict with any valid act of Congress, is not unconstitutional, because it may incidentally affffect interstate commerce."

As the restrictions imposed by the Florida Act of 1911 tend to the protection of the health, prosperity and welfare of the people of the State of Florida, it is unnecessary to reply to the argument by counsel for plaintiff in error relating to the right of the people of Florida to compete in the open markets with citizens of other States, or the desire of our own people to buy and use immature citrus fruits, or fruits unfit for consumption.

A similar contention was made in New York ex rel Sitz v. Hesterberg, 211 U. S. 31, but, as pointed out by this court in Purity Extract & Tonic Co. v. Lynch, supra, even though the possession of plover and grouse had been lawfully taken abroad during the open season and lawfully brought into the State and different varieties from plover and grouse in New York and

could be easily distinguished from the latter and were wholesome and valuable articles of food, the legislature of the State was authorized to pass measures for the protection of the people of the State in the exercise of police power and is itself the judge of the necessity or expediency of the means adopted, and it was pointed out by the court that the prohibition was expedient, "owing to the possibility that dealers in game may sell birds of the domestic kind under the claim that they were taken in another State or country."

Our statute does not aim, in terms, at shipment of immature fruits outside the State, but makes it a crime to sell or offer for sale or deliver for shipment in the State, and if a person could ship out of the State and ship the fruit back in the State the people would be injured in their health; and a man could sell fruit, not shipped out of the State, by claiming the same to have been shipped into the State.

The judgment of the Supreme Court of Florida should be affirmed.

CHARLES B. PARKHILL,
Attorney for Defendant in Error.

SLIGH *v.* KIRKWOOD, SHERIFF OF ORANGE COUNTY, FLORIDA.

ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

No. 185. Argued March 9, 10, 1915.—Decided April 5, 1915.

It is within the police power of the State to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits then and there immature and unfit for consumption.

While Congress has exclusive power to regulate interstate commerce, and the State may not, when Congress has exerted that power, in-

terfere therewith, even in the otherwise just exercise of its police power, the State may in such a case act until Congress does exert its authority, even though interstate commerce may be incidentally affected.

Limitations on the police power are hard to define; in its broadest sense that power includes all legislation and almost every function of civil government; it embraces regulations designed to protect and promote public convenience, property, welfare, safety and health.

This court takes judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida.

A State may protect its reputation in foreign markets by prohibiting the exportation of its products in such an improper form as would have a detrimental effect on its reputation.

This court will not consider the effect of a construction of a statute prohibiting the exportation of fruit when immature and unfit for consumption as food as prohibiting its export while immature for other commercial purposes than that of food until the state court has so construed it.

The provisions in the Federal Food and Drugs Act relating to shipment in interstate commerce of fruit in filthy, decomposed, or putrid condition do not apply to fruit unfit for consumption because green or immature. Congress has not covered the latter field.

Chap. 6236, § 1, Laws of Florida, of 1911, prohibiting the delivery for shipment of citrus fruits immature or otherwise unfit for consumption is not unconstitutional as an attempt to regulate interstate commerce.

65 Florida, 123, affirmed.

THE facts, which involve the constitutionality under the commerce clause of the Federal Constitution of a statute of Florida prohibiting the sale or shipment of citrus fruits which are immature or otherwise unfit for consumption, are stated in the opinion.

Mr. Charles B. Robinson, with whom *Mr. E. J. L'Engle* was on the brief, for plaintiff in error:

Section 1 of Chapter 6236, in so far as the same applies to interstate shipments, is in conflict with and contravenes § 8, Art. I, of the Federal Constitution, which provides that Congress shall have the power to regulate

commerce with foreign nations and among the several States and with the Indian tribes.

The plaintiff in error was not and could not legally be held in custody for the alleged violation of that act, upon and for an alleged shipment of citrus fruits out of and beyond the limits of the State, the validity of said section being denied and drawn in question on the ground that it is repugnant to and in contravention of the commerce clause of the Federal Constitution.

In support of these contentions, see *Stone* v. *Mississippi*, 101 U. S. Sup. Ct. 814; *Adams Expr. Co.* v. *New York*, 232 U. S. 14; *Kansas City &c. Ry.* v. *Kaw Valley District*, 233 U. S. 75; *Leisy* v. *Harden*, 135 U. S. 100; *S. C.*, 34 Law Ed. 128; *Minnesota Rate Cases*, 230 U. S. 352; *Bowman* v. *Chi. & N. W. R. R.*, 125 U. S. 479; *Vermont* v. *Peet*, 80 Vermont, 449; *S. C.*, 68 Atl. Rep. 661; *S. C.*, 14 L. R. A. N. S. 677.

Mr. Charles B. Parkhill for defendant in error:

Section 1, Chapter 6236 of the Laws of Florida, 1911, is constitutional and a valid exercise of the police power of the State. It is designed to promote the public health, and the police power of the State embraces regulations for that purpose. *Wilkerson* v. *Roher*, 140 U. S. 545.

The regulation of food stuff has in view the protection of health. Freund Police Power, Chapter 28, 232.

The term "provisions" means "food." Oranges are highly nutritious and are food. *State* v. *Angello*, 71 N. H. 224; 6 Words & Phrases, 5754.

Any substance which, taken into the body, is capable of sustaining or nourishing the living is food. 13 Am. & Eng. Encl. (2d ed.) 729; 3 Words & Phrases, 2856; *Arbuckle* v. *Blackburn*, 113 Fed. Rep. 616, 622.

The term "fruit" includes oranges. *Humphreys* v. *Union Ins. Co.*, 12 Fed. Cas. 876, 880; 4 Words & Phrases, 2994.

One of the informations filed against the plaintiff in error, covers citrus fruits, which are not only immature, but otherwise unfit for consumption. Clearly this statute is designed to protect the public health. *People* v. *Chiperly*, 101 N. Y. 634.

The statute is not in contravention of the commerce clause of the Federal Constitution. It does not seek to limit, regulate and control interstate commerce.

To constitute interstate commerce there must be an article or commodity, the subject of commerce, and destined to pass from one State to another. Only such commodities as may lawfully become the subjects of purchase, sale or exchange, are articles of interstate commerce, within the protection of the commerce clause of the Constitution. *Turner* v. *Maryland*, 107 U. S. 17.

The State of Florida has a right to say what shall be lawful, merchantable citrus fruits.

Articles which, on account of their existing condition, would bring and spread disease or pestilence, and meats or other provisions unfit for human use, are not legitimate subjects of trade and commerce, and are not within the protection of the commerce clause of the Constitution, but fall within the police power of the State. 17 Am. & Eng. Encl. (2d ed.) 67, 68.

When the legislature of Florida prohibits the sale or shipment of immature citrus fruits, or fruits unfit for consumption, it thereby prevents said citrus fruits from becoming an article of interstate commerce. *People* v. *Hesterberg*, 211 U. S. 31; *Dent* v. *West Virginia*, 129 U. S. 114; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192; *State* v. *Harrub*, 95 Alabama, 176.

The power of Congress to regulate interstate commerce does not interfere with the right of the State to prohibit its own property from becoming an article or commodity of interstate commerce, and a statute may take private

property out of the commerce clause of the Constitution, may outlaw such private property, if it be inherently bad or liable to affect the health, prosperity or welfare of the people of the State.

The police power of a State embraces regulations designed to promote the public convenience or the general prosperity or the public welfare, as well as those designed to promote the public safety or the public health. *Chicago, B. & Q. R. R.* v. *Drainage Com'rs*, 200 U. S. 561; *Lake Shore Ry.* v. *Ohio*, 173 U. S. 285; *Atlantic Coast Line* v. *Coachman*, 59 Florida, 130; *Commonwealth* v. *Savage*, 29 N. E. Rep. 468.

Where a law is for the protection of life, liberty and prosperity or the general welfare, there is no limitation upon the power of the legislature except as is found in the Constitution. *Hawthorn* v. *People*, 109 Illinois, 302.

The police power extends to regulations to preserve the reputation of the States in foreign markets. Freund, Police Power, § 276; *Critsman* v. *Northup*, 8 Cow. (N. Y.) 46.

The legislature may have known that immature citrus fruits, or citrus fruit unfit for consumption, shipped beyond the limits of the State of Florida would destroy the reputation of this important product of the State in the markets of the world. The legislature may have also known that the taking of immature citrus fruits from the trees would injure the trees and thus hurt the prosperity of the people of the State. The legislature may have known that the sale of immature oranges might cause the sale of immature and poor seed for the planting of orange groves, and thus hurt the prosperity of the State. *Plumley* v. *Massachusetts*, 155 U. S. 461; *Sherlock* v. *Alling*, 93 U. S. 99; *Dent* v. *West Virginia*, 129 U. S. 114.

The provisions of the act of 1911 bear a reasonable relation to the evil sought to be cured, and this court will uphold same. *Eubank* v. *Richmond*, 226 U. S. 137. *State* v. *Peet*, 80 Vermont, 449, distinguished.

MR. JUSTICE DAY delivered the opinion of the court.

A statute of the State of Florida undertakes to make it unlawful for anyone to sell, offer for sale, ship, or deliver for shipment, any citrus fruits which are immature or otherwise unfit for consumption.[1]

Plaintiff in error, S. J. Sligh, was charged by information containing three counts in the Criminal Court of Record in Orange County, Florida, with violation of this statute. One of the counts charged that Sligh delivered to an agent of the Seaboard Air Line Railway Company, a common carrier, for shipment to Winecoff & Adams, Birmingham, Alabama, one car of oranges, which were citrus fruits, then and there immature and unfit for consumption. Upon petition for writ of *habeas corpus* in the Circuit Court of Florida for Orange County, the court refused to order the release of Sligh, and remanded him to the custody of the Sheriff. Upon writ of error to the Supreme Court of Florida, that judgment was affirmed (65 Florida, 123), and the case is brought here.

The single question is: Was it within the authority of the State of Florida to make it a criminal offense to deliver for shipment in interstate commerce citrus fruits,—oranges in this case,—then and there immature and unfit for consumption?

It will be observed that the oranges must not only be immature, but they must be in such condition as renders

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[1] "Section 1. That it shall be unlawful for any one to sell, offer for sale, ship or deliver for shipment any citrus fruits which are immature or otherwise unfit for consumption, and for any one to receive any such fruits under a contract of sale, or for the purpose of sale, or of offering for sale, or for shipment or delivery for shipment. This section shall not apply to sales or contracts for sale of citrus fruits on the trees under this section; nor shall it apply to common carriers or their agents who are not interested in such fruits and who are merely receiving the same for transportation." Chap. 6236, Laws of Florida of 1911.

them unfit for consumption; that is, giving the words their ordinary signification, unfit to be used for food. Of course, fruits of this character, in that condition, may be deleterious to the public health, and, in the public interest, it may be highly desirable to prevent their shipment and sale. Not disputing this, the contention of the plaintiff in error is that the statute contravenes the Federal Constitution in that the legislature has undertaken to pass a law beyond the power of the State, because of the exclusive control of Congress over commerce among the States, under the Federal Constitution.

That Congress has the exclusive power to regulate interstate commerce is beyond question, and when that authority is exerted by the State, even in the just exercise of the police power, it may not interfere with the supreme authority of Congress over the subject; while this is true, this court from the beginning has recognized that there may be legitimate action by the State in the matter of local regulation, which the State may take until Congress exercises its authority upon the subject. This subject has been so frequently dealt with in decisions of this court that an extended review of the authorities is unnecessary. See the *Minnesota Rate Cases*, 230 U. S. 352.

While this proposition seems to be conceded, and the competency of the State to provide local measures in the interest of the safety and welfare of the people is not doubted, although such regulations incidentally and indirectly involve interstate commerce, the contention is that this statute is not a legitimate exercise of the police power, as it has the effect to protect the health of people in other States who may receive the fruits from Florida in a condition unfit for consumption; and however commendable it may be to protect the health of such foreign peoples, such purpose is not within the police power of the State.

The limitations upon the police power are hard to define,

and its far-reaching scope has been recognized in many decisions of this court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or citizens of the State, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the State. *New York* v. *Miln*, 11 Pet. 102, 139. The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier* v. *Connolly*, 113 U. S. 27. It is not subject to definite limitations, but is coextensive with the necessities of the case and the safeguards of public interest. *Camfield* v. *United States*, 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health. *Chicago &c. Railway* v. *Drainage Commissioners*, 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it was said: "Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. . . . And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.'" *Eubank* v. *Richmond*, 226 U. S. 137, 142.

The power of the State to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well established. Such articles,

it has been declared by this court, are not the legitimate subject of trade or commerce, nor within the protection of the commerce clause of the Constitution. "Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution." *Bowman* v. *Railway Company*, 125 U. S. 465, 489.

Nor does it make any difference that such regulations incidentally affect interstate commerce, when the object of the regulation is not to that end, but is a legitimate attempt to protect the people of the State. In *Geer* v. *Connecticut*, 161 U. S. 519, a conviction was sustained of one who was charged with having in his possession game birds, killed within the State, with the intention of procuring transportation of the same beyond state limits. This law was attacked upon the ground that it was a direct attempt to regulate commerce among the States. After discussing the peculiar nature of such property, and the power of the State over it, this court said (p. 534): "Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected. *Kidd* v. *Pearson*, 128 U. S. 1; *Hall* v. *De Cuir*, 95 U. S. 485; *Sherlock* v. *Alling*, 93 U. S. 99, 103; *Gibbons* v. *Ogden*, 9 Wheat. 1." In *New York, ex rel. Dilz*

v. *Hesterberg*, 211 U. S. 31, it was held that the State might punish the sale of imported game during the closed season in New York, notwithstanding such game was imported from abroad, and was thus beyond the control of the State, the law being sustained upon the ground that, while foreign commerce was incidentally affected, the State might prohibit the sale of such game in order to protect local game during the closed season; and to make such regulations effective required the prohibition of the sale of all game of that kind.

So it may be taken as established that the mere fact that interstate commerce is indirectly affected will not prevent the State from exercising its police power, at least until Congress, in the exercise of its supreme authority, regulates the subject. Furthermore, this regulation cannot be declared invalid if within the range of the police power, unless it can be said that it has no reasonable relation to a legitimate purpose to be accomplished in its enactment; and whether such regulation is necessary in the public interest is primarily within the determination of the legislature, assuming the subject to be a proper matter of state regulation.

We may take judicial notice of the fact that the raising of citrus fruits is one of the great industries of the State of Florida. It was competent for the legislature to find that it was essential for the success of that industry that its reputation be preserved in other States wherein such fruits find their most extensive market. The shipment of fruits, so immature as to be unfit for consumption, and consequently injurious to the health of the purchaser, would not be otherwise than a serious injury to the local trade, and would certainly affect the successful conduct of such business within the State. The protection of the State's reputation in foreign markets, with the consequent beneficial effect upon a great home industry, may have been within the legislative intent, and it certainly could not be

said that this legislation has no reasonable relation to the accomplishment of that purpose.

As to the suggestion that the shipment of such fruit may be legitimately made for commercial purposes, for the purpose of making wine, citric acid, and possibly other articles, it is sufficient to say that this case does not present any such state of facts, and of course the constitutional objection must be considered in view of the case made before the court, which was a delivery for shipment of oranges so immature as to be unfit for consumption. Whether such a case, as supposed, of shipment for commercial purposes, would be within the statute, would be primarily for the state court to determine, and it is not for us to say, as no such case is here presented.

It is pointed out in the opinion of the Supreme Court of Florida, and we repeat here, that no act of Congress has been called to our attention undertaking to regulate shipments of this character, which would be contravened by the act in question. As the Florida court says, the sixth subdivision of the Food and Drugs Act, if citrus fruits should be held to be within the prohibitions against vegetable substances, includes only such as are in whole or in part filthy, decomposed or putrid. Green or immature fruit, equally deleterious to health, does not seem to be within the Federal act. Therefore until Congress does legislate upon the subject, the State is free to enter the field. *Savage* v. *Jones*, 225 U. S. 501.

In the *Vermont Case*, referred to by counsel for plaintiff in error, *State of Vermont* v. *Peet*, 80 Vermont, 449, the act made it unlawful to ship without the State veal less than four weeks old when killed, and it was held to run counter to the Federal act and regulation upon the same subject.

We find no error in the judgment of the Supreme Court of Florida, and it is

Affirmed.